

HOUSE BILL No. 1118

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1; IC 8-1.7.

Synopsis: Public power and finance authority. Creates the public power and finance authority. Provides that the authority may sell electricity to customers throughout Indiana (other than investor owned utilities) at cost. Creates an energy for jobs program, which retains jobs in Indiana through the donation of electricity. Requires the authority to use project labor agreements. Repeals alternative utility regulation but retains the regulatory flexibility committee.

Effective: July 1, 2002.

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January 8, 2002, read first time and referred to Committee on Commerce, Economic Development and Technology.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1118

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-2.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]: **Sec. 2.5. (a) The regulatory flexibility committee**
4 **established by IC 8-1-2.6-4 to monitor changes in the telephone**
5 **industry shall serve also to monitor changes and competition in the**
6 **energy utility industry.**

7 **(b) The commission shall, before August 15, 2002, and before**
8 **August 15 of each year after 2002, prepare for presentation to the**
9 **regulatory flexibility committee an analysis of the effects of**
10 **competition or changes in the energy utility industry on service and**
11 **on the pricing of all energy utility services under the jurisdiction**
12 **of the commission.**

13 **(c) In addition to reviewing the commission report prepared**
14 **under subsection (b), the regulatory flexibility committee also shall**
15 **issue a report and recommendations to the legislative council**
16 **before November 1, 2002, and before November 1 of each year**
17 **after 2002 that are based on a review of the following issues:**

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(1) The effects of competition or changes in the energy utility industry and the effect of the competition or changes on the residential rates.

(2) The status of modernization of the energy utility facilities in Indiana and the incentives required to further enhance that infrastructure.

(3) The effects on economic development of this modernization.

(4) The traditional method of regulating energy utilities and the method's effectiveness.

(5) The economic and social effectiveness of traditional energy utility service pricing.

(6) The effects of legislation enacted by the United States Congress.

(7) The effect of the entry of the public power and finance authority into the energy utility industry in Indiana.

(8) All other energy utility issues the committee considers appropriate.

(d) This section:

(1) does not give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 2002;

(2) does not give the commission the authority to order a party to a collective bargaining agreement to cancel, terminate, amend, or otherwise modify the collective bargaining agreement; and

(3) may not be implemented by the committee in a way that would give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 2002.

(e) The regulatory flexibility committee shall meet on the call of the co-chairs to study energy utility issues described in subsection

(c). The committee shall, with the approval of the commission, retain independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid with funds from the public utility fees assessed under IC 8-1-6.

(f) The legislative services agency shall provide staff support to the committee.

(g) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees

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1 **established by the legislative council.**

2 SECTION 2. IC 8-1-2-4 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2002]: Sec. 4. **(a)** Every public utility is
4 required to furnish reasonably adequate service and facilities. The
5 charge made by any public utility for any service rendered or to be
6 rendered either directly or in connection therewith shall be reasonable
7 and just, and every unjust or unreasonable charge for such service is
8 prohibited and declared unlawful. The commission, in order to expedite
9 the determination of rate questions, or to avoid unnecessary and
10 unreasonable expense, or to avoid discrimination in rates between
11 classes of customers, or, whenever in the judgment of the commission
12 public interest so requires, may, for ratemaking and accounting
13 purposes, or either of them, consider a single municipality and/or two
14 (2) or more municipalities and/or the adjacent and/or intervening rural
15 territory as a regional unit where the same utility serves such region,
16 and may within such region prescribe uniform rates for consumers or
17 patrons of the same class. Nothing in this chapter contained shall
18 authorize any public utility during the remainder of the term of any
19 grant or franchise under which it may be acting on May 1, 1913, to
20 charge for any service, in such grant or franchise contracted, exceeding
21 the maximum rate or rates therefor, if any, that may be fixed in such
22 grant or franchise.

23 **(b) Except as provided in subsection (c), a charge made by the**
24 **public power and finance authority established by IC 8-1.7-1-2 to**
25 **a customer (as defined in IC 8-1.7-2-8) within Indiana may not**
26 **exceed the cost of service (as defined in IC 8-1.7-2-7).**

27 **(c) A charge made by the public power and finance authority to:**

28 **(1) an investor owned utility; or**

29 **(2) a customer outside Indiana;**

30 **may exceed the cost of service.**

31 SECTION 3. IC 8-1-2.3-2 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) The definitions
33 in this section apply throughout this chapter.

34 (b) "Electricity supplier" means a public utility, a local district rural
35 electric membership corporation, or a municipally owned electric
36 utility which furnishes retail electric service to the public. **However,**
37 **the term does not include a facility (as defined in IC 8-1.7-2-11).**

38 (c) "Retail electric service" means electric service furnished to a
39 customer for ultimate consumption, but does not include wholesale
40 electric service furnished by an electricity supplier to another
41 electricity supplier for resale.

42 (d) "Existing electric distribution line" means an electric conductor

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which on January 1, 1979, was being used for the distribution or delivery of retail electric service.

(e) "Assigned service area" means the designated geographic area within the boundaries of which an electricity supplier is authorized to furnish all retail electric service, as provided in this chapter.

(f) "Municipality" means a city or town.

(g) "Existing municipal limits" means the corporate boundaries of any municipality as such boundaries existed on January 1, 1979.

SECTION 4. IC 8-1.7 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 1.7. PUBLIC POWER AND FINANCE AUTHORITY

Chapter 1. General Provisions

Sec. 1. The general assembly makes the following findings:

(1) Indiana citizens require and deserve an adequate, reliable, and economical supply of electric power and energy.

(2) It is necessary and proper to create an entity that will satisfy its obligation to serve the energy needs of Indiana's citizens without depleting their resources.

(3) The present and prospective health, safety, morals, and general welfare of the people of Indiana require as a public purpose the creation of an adequate, reliable, and economical energy source.

(4) The public power and finance authority can advance the state policy of providing affordable electric service to all Indiana citizens regardless of their income.

Sec. 2. There is established a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions, to be known as the public power and finance authority.

Sec. 3. The authority shall exist and operate for the public purposes of:

(1) providing affordable and accessible electricity;

(2) promoting reusable energy sources;

(3) promoting opportunities for gainful employment;

(4) preventing and remediating environmental pollution; and

(5) increasing energy efficiency.

Sec. 4. (a) Except as provided in subsection (b), all property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments imposed by the state or a political

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subdivision, except for the financial institutions tax imposed under IC 6-5.5 or a death tax imposed under IC 6-4.1. However, the authority may elect to make payments in lieu of taxes to the appropriate taxing unit.

(b) Property owned by the authority and leased to a facility is not public property. The property and the facility are subject to all taxes of the appropriate taxing unit in the same manner and subject to the same exemptions as are applicable to all persons.

Sec. 5. Except as provided in this article, the authority is subject to the jurisdiction of the commission.

Sec. 6. This article provides a complete method for the performance of things authorized, supplements and adds to powers conferred by other laws, and is not in derogation of any existing powers. However, to the extent this article is inconsistent with any other law, the provisions of this article control. This article does not authorize the issuance of bonds for the purpose of financing facilities to be owned by any private corporation.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Authority" refers to the public power and finance authority established by IC 8-1.7-1-2.

Sec. 3. "Bonds" means revenue bonds, notes, and other evidence of indebtedness of the authority issued under this chapter.

Sec. 4. "Business" has the meaning set forth in IC 8-1.7-7-1.

Sec. 5. "Clean coal technology" has the meaning set forth in IC 8-1-2-6.6.

Sec. 6. "Cost" or "cost of a project" includes the:

- (1) acquisition;
- (2) construction;
- (3) reconstruction;
- (4) improvement;
- (5) enlargement;
- (6) extension;
- (7) decommissioning; or
- (8) disposal;

of a project or any part of a project.

Sec. 7. "Cost of service" means the total cost of providing service to a customer. The term includes charges that produce revenue sufficient to:

- (1) pay all legal and other necessary expense incident to the operation of its system, including maintenance cost, operating



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charges, upkeep, depreciation and amortization, repairs, and interest charges on bonds or other obligations;

(2) maintain cash reserves of at least ten percent (10%) from the proceeds of the sale of bonds or from other revenue;

(3) implementing and operating authority programs, including:

(A) clean coal technology; and

(B) energy for jobs; and

(4) provide adequate funds to be used as working capital, as well as funds for making extensions and replacements (to the extent not provided for through depreciation).

Sec. 8. "Customer" means a person that purchases energy from the authority. The term does not include an investor owned utility.

Sec. 9. "Department" refers to the Indiana department of administration.

Sec. 10. "Energy" means all electric energy no matter how generated or produced.

Sec. 11. "Facility" means a facility owned by the authority and used for the:

(1) production, transmission, delivery, or furnishing of heat, light, or power; and

(2) sale of electric energy on the wholesale or retail market; to other public utilities, energy service providers, or power marketers. Except as otherwise provided, a facility is a "public utility" (as defined in IC 8-1-2-1).

Sec. 12. "Indiana coal" has the meaning set forth in IC 8-1-2-6.1.

Sec. 13. "Local electricity supplier" has the meaning set forth in IC 8-1.7-7-2.

Sec. 14. "Nonprofit corporation" has the meaning set forth in IC 8-1.7-7-3.

Sec. 15. "Person" means an individual, a partnership, a corporation, a limited liability company, an unincorporated association, any other business organization, or a governmental entity.

Sec. 16. "Program" refers to the energy for jobs program established by IC 8-1.7-7-5.

Sec. 17. "Project" includes any plant, works, system, facility, and other property necessary or convenient in the generation, transmission, transformation, purchase, sale, exchange, interchange, or other provision of services.

Sec. 18. "Project labor agreement" means a project specific

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agreement between the authority and at least one (1) labor union.

Sec. 19. "Public utility" has the meaning set forth in IC 8-1-2-1.

Sec. 20. "Service" or "services" means the furnishing of energy or other utility services incidental to development, operation, or maintenance of utility infrastructure and the rendering of related engineering, financial, accounting, or other services and related materials or equipment assisting in the establishment and maintenance of better communications between the authority and its customers.

Sec. 21. "Small business" has the meaning set forth in IC 8-1.7-7-4.

Sec. 22. "State agency" means an authority, a board, a commission, a committee, a department, a district, a division, or other instrumentality of state government. The term does not include a state educational institution (as defined in IC 20-12-0.5-1).

Chapter 3. Public Power and Finance Authority

Sec. 1. All members of the authority must be residents of Indiana.

Sec. 2. A candidate for appointment to the authority shall be evaluated on the following considerations:

- (1) Education and academic honors and awards achieved.
- (2) Professional experience and reputation.
- (3) Financial interests, including any such interest that might conflict with the performance of authority responsibilities.
- (4) Any other pertinent information that the governor believes is important in selecting the most highly qualified individuals for authority membership.

Sec. 3. The authority consists of eleven (11) members. The governor shall appoint the eleven (11) initial authority members as follows:

- (1) One (1) member from each congressional district.
- (2) Two (2) members at large.

Not more than six (6) members may be of the same political party.

Sec. 4. (a) Three (3) of the appointments under section 3(1) of this chapter are for one (1) year.

(b) Three (3) of the appointments under section 3(1) of this chapter are for two (2) years.

(c) Three (3) of the appointments under section 3(1) of this chapter are for three (3) years.

(d) The appointments under section 3(2) of this chapter are for four (4) years.



(e) An appointment to the authority under section 5 of this chapter is for four (4) years.

Sec. 5. (a) A member shall hold office for the term of the member's appointment and shall continue to serve after expiration of the appointment until a successor is appointed and qualified.

(b) Upon the expiration or vacancy of an initial or subsequent term, the members of the authority, with the exception of a member whose term has expired or whose position is otherwise vacant, shall appoint a successor.

(c) Any member is eligible for reappointment.

(d) A member appointed to fill a vacancy created other than by an expiration of a term shall be appointed for the unexpired part of the term.

(e) An individual or member appointed to succeed an individual appointed under section 3(1) of this chapter must reside in the same congressional district as the initial member.

Sec. 6. Any member or employee of the authority who has or later acquires an interest in a transaction with the authority shall immediately disclose in writing the nature and extent of the interest to the authority as soon as the member has knowledge of the interest. The member shall disclose the interest in open meeting, and the disclosure shall be entered upon the minutes of the authority. The member may not participate in any action by the authority authorizing the transaction. However, an interest does not invalidate an action by the authority in which the disclosing member participated before the disclosing member became or should reasonably have become aware of the interest.

Sec. 7. (a) Employees of the authority are not employees of the state.

(b) A state officer or employee may accept membership in or provide services to the authority.

Sec. 8. The powers of the authority are vested in the members. Six (6) members of the authority constitute a quorum for the transaction of business. The affirmative vote of at least six (6) members is necessary for any action to be taken by the authority. Members may vote by written proxy delivered in advance to any other member who is present at the meeting. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

Sec. 9. The members shall appoint a member as director of the authority.

Sec. 10. Meetings of the members of the authority shall be held



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at:

(1) the call of the director; or

(2) the request of any three (3) members.

In any event, the members shall meet at least once every three (3) months to attend to the business of the authority.

Sec. 11. Each member of the authority shall file with the secretary of state a bond in the sum of twenty-five thousand dollars (\$25,000) for the faithful performance of the member's duties. To the extent a member is already covered by a bond required by Indiana law, the member need not obtain another bond so long as the bond required by Indiana law is in at least the sum of twenty-five thousand dollars (\$25,000) and covers the member's activities for the authority. Instead of a bond, the director may execute a blanket surety bond covering each member. Each surety bond shall be conditioned upon the faithful performance of the duties of the office of the member and shall be issued by a surety company authorized to transact business in Indiana as surety. At all times after the issuance of any surety bonds, each member shall maintain the surety bonds in full force and effect. The authority shall bear all costs of the surety bonds.

Chapter 4. Powers and Duties of the Authority

Sec. 1. The authority is granted all powers necessary and appropriate to carry out its public and corporate purposes under this article, including the following:

(1) Execute instruments.

(2) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions.

(3) Sue and be sued in its own name.

(4) Have an official seal and alter it at will.

(5) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this article.

(6) Employ architects, engineers, attorneys, inspectors, technicians, financial experts, and such other advisers, consultants, and agents as may be necessary in its judgment and fix their compensation.

(7) Procure insurance against any loss in connection with its property and other assets, including loans and loan notes in amounts and from insurers as it may consider advisable.

(8) Provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation

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of economical and efficient energy facilities.

(9) Cooperate and exchange services, personnel, and information with any federal, state, or local government agency or instrumentality of the United States or Indiana.

(10) Enter into agreements concerning and acquire, hold, and dispose of by any lawful means, land or interests in land, building improvements, structures, personal property, franchises, patents, accounts receivable, loans, assignments, guarantees, and insurance needed for purposes of this article.

(11) Expend money, as the authority considers appropriate.

(12) Sell, convey, lease, exchange, transfer, or otherwise dispose of property or any interest in property, wherever the property is located.

(13) Acquire in the name of the authority by the exercise of the right of condemnation under IC 8-1-8 public or private lands, rights-of-way, property, rights, easements, and interests, as necessary for carrying out this article.

(14) Do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this article, including compliance with requirements of federal law imposed from time to time for the issuance of bonds.

Sec. 2. The authority's powers under this chapter shall be interpreted broadly to effectuate the purposes of this article and may not be construed as a limitation of powers.

Sec. 3. The authority shall:

(1) make bylaws for the regulation and management of the affairs of the authority;

(2) establish a code of ethics for its employees;

(3) issue securities and incur indebtedness in an amount not to exceed three billion dollars (\$3,000,000,000);

(4) establish cash reserves of at least ten percent (10%) from the proceeds of the sale of bonds or from other revenue;

(5) invest any funds not needed for immediate disbursement, including any funds held in reserve; and

(6) apply the proceeds from its investments to reduce the cost of service.

Chapter 5. Bonds

Sec. 1. The issuance of bonds by the authority does not constitute a debt of the state. Neither the faith and credit nor the taxing power of the state is pledged to payment of principal or interest on the bond.

Sec. 2. The issuance of bonds shall be authorized by a resolution

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of the authority. The authority shall issue bonds to pay the cost of a project. The authority may pledge the revenues derived from the ownership and operation of authority facilities to the payment of the principal and interest on bonds authorized and issued by the authority.

Sec. 3. The authority has the power to borrow money and to issue bonds to pay all or part of the cost of carrying out its purposes, including:

- (1) the funding or refunding of the principal, interest, or other obligation on a bond issued by the authority whether or not the bond is due;
- (2) the establishment or increase of reserves to secure or to pay the bonds;
- (3) the provision of working capital; and
- (4) any expense incurred in or incident to carrying out the provisions of this article.

Sec. 4. The principal and interest on bonds issued by the authority are payable solely from the revenues of bonds issued by the authority.

Sec. 5. A bond issued by the authority must indicate on its face the following:

- (1) The maturity date, which may not be later than fifty (50) years after the date of issue.
- (2) The interest rate, including whether the rate is fixed or variable, or both.
- (3) The denomination of the bond.
- (4) Conversion or registration privileges.
- (5) The places of payment, at least one (1) of which must be in Indiana.
- (6) The conditions and terms under which the bondholder may redeem the bond before maturity.

Sec. 6. (a) Every issue of authority bonds shall be obligations of the authority payable solely out of any specified revenue or money of the authority, subject to an agreement with a holder of a bond pledging particular money or revenue.

(b) A bond issued by the authority may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government, any corporation, limited liability company, association, institution, or person, or a pledge of money, money, or revenue of the authority from any source.

Sec. 7. The authority shall determine the form and manner of execution of the bonds, including the attachment of interest

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1 coupons.

2 Sec. 8. The authority may sell authority bonds at:

3 (1) a public or private sale; and

4 (2) a price determined by the authority.

5 Sec. 9. Subject to agreements with bondholders, the authority
6 may purchase authority bonds out of any funds available. These
7 bonds shall be canceled at a reasonable price. If the bonds are
8 redeemable, the purchase price may not exceed the redemption
9 price plus interest accrued to the next interest payment on the
10 bond.

11 Sec. 10. Regardless of the form and character, authority bonds
12 are made negotiable instruments, subject only to provisions of the
13 bonds relating to registration.

14 Sec. 11. An authority bond may be executed by manual or
15 facsimile signature of the director or an authority member
16 designated by the director. If the director or the director's designee
17 ceases to be a member of the authority before the delivery of a
18 bond executed by the director or the director's designee, the
19 signature on the bond is valid as if the director or the director's
20 designee had remained in office until the delivery.

21 Sec. 12. The members of the authority are not subject to
22 personal liability for an act under this chapter, including the
23 issuance and execution of bonds.

24 Sec. 13. All money received by the authority shall be deposited
25 as soon as practical in a separate account in a bank or trust
26 company organized under the laws of Indiana or a national
27 banking association. The money in an account shall be paid out on
28 checks signed by the director or by other means authorized by the
29 authority.

30 Sec. 14. All expenses incurred by the authority in carrying out
31 this article are payable solely from funds provided under this
32 chapter.

33 Sec. 15. Bonds issued under this chapter and:

34 (1) proceeds received from the sale of the bonds by a holder;

35 (2) proceeds received on the redemption of the bonds before
36 maturity;

37 (3) proceeds received at the bonds' maturity; and

38 (4) interest received on the bonds;

39 are exempt from state taxes under IC 6-8-5.

40 Sec. 16. (a) The bonds issued by the authority under this chapter
41 are legal investments in which the following may invest:

42 (1) Public officers or bodies of the state.

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1 (2) Political subdivisions.

2 (3) Municipalities and municipal subdivisions.

3 (4) Insurance companies and other persons carrying on
4 insurance business.

5 (5) Banks, trust companies, savings associations, and other
6 persons carrying on banking business.

7 (6) Administrators, guardians, trustees, and other fiduciaries.

8 (7) Other persons who are or may be authorized to invest in
9 bonds.

10 (b) Bonds issued by the authority under this chapter are
11 securities that may be deposited with and received by the
12 following:

13 (1) Public officers and bodies of the state.

14 (2) Agencies or political subdivisions of the state.

15 (3) Municipalities and public commissions.

16 Chapter 6. Clean Coal Technology

17 Sec. 1. The general assembly finds that:

18 (1) there exists clean coal technology that, if successfully
19 implemented, will increase the fortunes of the coal industry
20 and, as a result, workers in the industry and their families and
21 communities and, ultimately, the state; and

22 (2) implementation of clean coal technology serves the public
23 purposes of public health, welfare, safety, and economic
24 development.

25 Sec. 2. There is established within the authority the clean coal
26 technology program. The authority shall manage the clean coal
27 technology program with the advice of the department of
28 commerce. The authority may not spend more than forty million
29 dollars (\$40,000,000) from revenues of bonds issued under
30 IC 8-1.7-5 to develop, implement, manage, and promote the clean
31 coal technology program.

32 Sec. 3. The authority must obtain a certificate of public
33 convenience and necessity from the commission under IC 8-1-8.7
34 before implementing the clean coal technology program.

35 Sec. 4. The authority may perform the following duties:

36 (1) Develop technologies that use Indiana coal in an
37 environmentally and economically sound manner.

38 (2) Investigate the reuse of clean coal technology byproducts,
39 including fly ash.

40 (3) Generate innovative research in the field of coal use.

41 (4) Develop new, efficient, and economical sorbents for
42 effective control of emissions.



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- (5) Investigate ways to increase coal combustion efficiency.
- (6) Develop materials that withstand higher combustion temperatures.
- (7) Pursue any other matter concerning coal and clean coal technology.

Sec. 5. In carrying out its duties under this chapter, the authority may cooperate with and use the resources of:

- (1) state educational institutions;
- (2) a state or federal department or agency;
- (3) a political subdivision; and
- (4) interest groups representing business, environment, industry, science, and technology.

Chapter 7. Energy for Jobs Program

Sec. 1. For purposes of this chapter, "business" means an individual, a partnership, a corporation, a limited liability company, or a joint venture of any kind that normally uses a minimum peak electric demand that exceeds an amount determined by the authority under section 11 of this chapter.

Sec. 2. For purposes of this chapter, "local electricity supplier" means a public utility, a local district rural electric membership corporation, or a municipally owned electric utility that furnishes retail electric service in a service area that includes a business, small business, or nonprofit corporation that has entered into a contract with the authority for the purchase of power under this article.

Sec. 3. For purposes of this chapter, "nonprofit corporation" means a corporation incorporated under or subject to IC 23-17.

Sec. 4. For purposes of this chapter, "small business" means an individual, a partnership, a corporation, a limited liability company, or a joint venture of any kind that normally uses a minimum peak electric demand equal to or less than an amount determined by the authority under section 11 of this chapter.

Sec. 5. The energy for jobs program is established to allocate energy to businesses, small businesses, and nonprofit corporations that:

- (1) commit to retain or create jobs in Indiana; and
- (2) qualify for allocations under this chapter.

Sec. 6. The authority may allocate energy to the following under the program for the purpose of job retention:

- (1) A business that demonstrates to the satisfaction of the authority that:
 - (A) it is considering relocating facilities or operations in

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Indiana to locations outside Indiana, and its unit cost of electricity at its facilities in Indiana exceeds the cost of electricity at the locations outside Indiana where it would relocate its facilities or operations; or

(B) it is at risk of closing or curtailing facilities or operations in Indiana, and its unit cost of electricity at its facilities in Indiana exceeds the cost of electricity at locations outside Indiana where its competitors have facilities or operations.

(2) A nonprofit corporation that demonstrates to the satisfaction of the authority that:

(A) it provides critical services or substantial benefits to one (1) or more communities in Indiana; and

(B) it is at significant risk of closing or curtailing its facilities or operations in Indiana.

Sec. 7. The authority may allocate energy under the program for the purpose of job creation to a business, small business, or nonprofit corporation that demonstrates to the satisfaction of the authority that it has formulated and will implement a comprehensive plan to create a specified number of new jobs in Indiana. In evaluating an application for energy under this section, the authority shall consider the following:

(1) The number of new jobs proposed to be created.

(2) The applicant's long term commitment to Indiana, as evidenced by the applicant's current and planned capital investment in facilities in Indiana.

(3) The ratio of the number of jobs to be created to the amount of energy requested by the applicant.

(4) The types of jobs created, as measured by wage and benefit levels and the security and stability of employment.

(5) The types and costs of any buildings, equipment, or facilities to be constructed, enlarged, or installed under the applicant's plan.

(6) The extent to which an energy allocation under the program will affect the overall productivity or competitiveness of the applicant's business and its existing employment, if any, within Indiana.

(7) The extent to which an energy allocation to the applicant may result in a competitive disadvantage for other businesses, small businesses, or nonprofit corporations in Indiana.

(8) The general economic conditions and level of economic distress in the community in which the applicant proposes to

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create new jobs.

(9) The growth potential of the applicant's existing or proposed facilities and operations in the community in which the applicant proposes to create new jobs and the expected contribution of the proposed jobs to the community's economic strength.

(10) The extent to which an allocation of energy under the program is:

(A) consistent with state, regional, and local economic development strategies and priorities; and

(B) supported by local units of government in the area in which the applicant proposes to create new jobs.

(11) The effect of an allocation under the program on:

(A) the operation of any other facilities of the applicant within Indiana;

(B) other businesses, small businesses, and nonprofit corporations in Indiana; and

(C) other electric ratepayers.

Sec. 8. In deciding whether to allocate energy to an applicant under section 6 or 7 of this chapter, the authority shall consider whether the community in which the applicant proposes to create new jobs has offered to provide economic incentives to the applicant to supplement the incentives available under the program.

Sec. 9. (a) The authority shall prescribe the form of an application for energy under section 6 or 7 of this chapter. The application may require the applicant to provide any information, exhibits, or supporting data that the authority considers necessary to evaluate a request for energy under the program. The form of an application for energy under section 7 of this chapter must, at a minimum, require the applicant to provide information that will enable the authority to consider the criteria required under that section.

(b) The authority shall solicit applications for energy under the program by public notice in the form of newspaper advertisements, press releases, and any other means that the authority considers appropriate.

Sec. 10. (a) Subject to section 11 of this chapter, a contract between the authority and an applicant for an allocation of energy under this chapter may not last for more than three (3) years.

(b) Upon the expiration of a contract under subsection (a), an applicant may reapply for an allocation of energy under section 6

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or 7 of this chapter.

(c) The terms of a contract under this section shall specify the number of jobs to be:

(1) retained under section 6 of this chapter; or

(2) created under section 7 of this chapter.

Sec. 11. (a) The authority shall establish criteria to determine the following:

(1) Minimum peak electric demands for businesses and small businesses under this chapter.

(2) Termination of an allocation of energy under this chapter due to breach of a contract under section 10 of this chapter.

(3) Total annual amount of energy to be allocated under this chapter based on kilowatt hours or another measure of energy determined by the authority.

(4) Distribution of energy among applicants receiving energy under this chapter.

Chapter 8. Rates and Provision of Services

Sec. 1. (a) The purpose of this chapter is to ensure that the rates charged by the service produce an income sufficient to maintain the authority and its property in a sound physical and financial condition to render adequate and efficient service.

(b) Revenues and receipts not needed for purposes of this article shall be applied to abate current charges for energy.

Sec. 2. The authority shall file with the commission, within a time fixed by the commission, schedules open to public inspection that show all rates the authority has established that are enforced at the time for any service performed by it or any facility controlled or operated by it.

Sec. 3. (a) A charge made by the authority to a customer within Indiana may not exceed the cost of service.

(b) A charge made by the authority to:

(1) an investor owned utility; or

(2) a customer outside Indiana;

may exceed the cost of service.

Sec. 4. The authority may not provide service to:

(1) an investor owned utility; or

(2) a customer outside Indiana;

unless it renders adequate, reliable, and economical service to its customers in Indiana.

Chapter 9. Facilities

Sec. 1. A facility is subject to the jurisdiction of the commission.

Sec. 2. Notwithstanding any other law, the authority shall give



1 preference to the following locations for siting a facility:

- 2 (1) Brownfield sites that are isolated from populated areas.
- 3 (2) Sites of existing or former utilities that can be replaced or
- 4 repowered.
- 5 (3) Other sites identified for power plant or heavy industrial
- 6 development in local land use plans before the initiation of site
- 7 selection for the facility.

8 **Sec. 3. (a)** Not later than seven (7) days after filing a petition
9 with the commission for the construction, purchase, or lease of any
10 facility for the generation of electricity, the authority shall:

- 11 (1) send notice of the petition by United States mail to all
- 12 record owners of real property located within one-half (1/2)
- 13 mile of the proposed facility; and
- 14 (2) cause notice of the petition to be published in a newspaper
- 15 of general circulation in each county in which the facility or
- 16 proposed facility is or will be located.

17 (b) The notice of the petition must include a description of the
18 facility or proposed facility.

19 **Sec. 4.** Not later than thirty (30) days after the authority files a
20 petition with the commission, a majority of the persons described
21 in section 3(1) of this chapter may request in writing a hearing
22 before the commission.

23 **Sec. 5. (a)** Not later than thirty (30) days after a hearing is
24 requested under section 4 of this chapter, the commission shall
25 conduct a hearing at a location in a county in which the facility or
26 proposed facility is or will be located. The hearing required by this
27 subsection must be held:

- 28 (1) before or at the same time as the hearing required under
- 29 IC 8-1-8.5-5(b); and
- 30 (2) before the commission issues a certificate of public
- 31 convenience and necessity under IC 8-1-8.5.

32 (b) At least ten (10) days before the scheduled hearing, notice of
33 the hearing must be served by first class mail on:

- 34 (1) all record owners of property located within one-half (1/2)
- 35 mile of the proposed facility; and
- 36 (2) the authority.

37 (c) The parties to the hearing include:

- 38 (1) a person entitled to notice under subsection (b)(1); and
- 39 (2) the authority.

40 (d) The commission shall accept written or oral testimony from
41 any person who appears at the public hearing, but the right to call
42 and examine witnesses is reserved for the parties to the hearing.

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(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 6. (a) For purposes of this section:

(1) "department" refers to the department of natural resources; and

(2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve the siting of a facility, the commission shall obtain a recommendation from the department regarding the authority's planned use of and its potential effect on the water resource.

(c) To make its recommendation, the department may do the following:

(1) Rely on the authority's water resource assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the facility on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) The authority shall provide an assessment of a facility's effect on the water resource and its users to the commission and the department. A licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1 shall prepare the assessment. The assessment must include the following information:

(1) Sources of water supply.

(2) Total amount of water to be used by the facility for each source.

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the facility and other users.

(5) Probable effects of the facility's use and consumption of the water resource on other users.

(6) Alternative sources of water supply.

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(7) Conservation measures proposed by the authority for reducing the facility's effect on the water resource.

(8) Other information required by any other law, rule, or regulation.

Chapter 10. Project Labor Agreements

Sec. 1. The authority shall negotiate and enter into a project labor agreement at the beginning of a project.

Sec. 2. There shall be a project labor agreement with each union representing the crafts that are needed for a project.

Sec. 3. The terms of a project labor agreement must address the following:

(1) Wages, including benefits.

(2) Working conditions.

(3) Work rules.

(4) Dispute resolution procedures.

(5) Worker skills and standards.

Sec. 4. A project labor agreement must specify a source of skilled labor for a project. The authority shall give preference to workers who are Indiana residents.

Sec. 5. A project labor agreement must contain a guarantee that there will be no strikes, lockouts, or other disruptions on a project.

Sec. 6. This chapter shall not be construed to exclude or deter a business from bidding on a contract for an authority project.

Sec. 7. A worker may not be required to join a union.

SECTION 5. IC 8-1-2.5 IS REPEALED [EFFECTIVE JULY 1, 2002].

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